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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



D13

FILE:  Office: CALIFORNIA SERVICE CENTER Date: DEC 28 2010

IN RE: Petitioner:
Beneficiary:



PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(1), to perform services as a pastor. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

On appeal, counsel asserts that the director failed to consider the petitioner's certificate of deposit as evidence of the petitioner's ability to compensate the beneficiary.

Section 101(a)(15)(R) of the Act pertains to an alien who:

- (i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and
- (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

Section 101(a)(27)(C)(ii) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii), pertains to a nonimmigrant who seeks to enter the United States:

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
- (II) . . . in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
- (III) . . . in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986) at the request of the organization in a religious vocation or occupation.

The issue presented is whether the petitioner has established how it intends to compensate the beneficiary.

The regulation at 8 C.F.R. § 214.2(r)(11) provides:

Evidence relating to compensation. Initial evidence must state how the petitioner intends to compensate the alien, including specific monetary or in-kind compensation, or whether the alien intends to be self-supporting. In either case,

the petitioner must submit verifiable evidence explaining how the petitioner will compensate the alien or how the alien will be self-supporting. Compensation may include:

(i) *Salaried or non-salaried compensation.* Evidence of compensation may include past evidence of compensation for similar positions; budgets showing monies set aside for salaries, leases, etc.; verifiable documentation that room and board will be provided; or other evidence acceptable to USCIS. IRS documentation, such as IRS Form W-2 or certified tax returns, must be submitted, if available. If IRS documentation is unavailable, the petitioner must submit an explanation for the absence of IRS documentation, along with comparable, verifiable documentation.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner stated that it would pay the beneficiary \$30,000 to \$40,000 per year in addition to vehicle insurance, gasoline expenses, and bonuses. The petitioner submitted a copy of a December 12, 2009 letter from its bank certifying that the petitioner had a checking account with a balance of \$53,431 and a certificate of deposit (CD), opened in May 2006, of \$52,063. The petitioner also submitted a copy of its budget. The document does not indicate the period covered by the budget but indicated that the petitioner had budgeted \$40,000 for pastoral wages. A copy of its first quarter financial statement for 2010 indicates that the petitioner had budgeted \$26,000 for the quarter but actual receipts totaled only \$8,126.25. Expenses were budgeted at \$22,500. Actual expenses totaled \$5,590.98. The financial statement did not indicate any expenses for pastoral wages but did include "stipends and bonuses" budgeted for \$7,000 with actual expenditure of \$2,110. The petitioner stated that the beneficiary had worked for the organization during his practical training as a student and submitted copies of processed checks reflecting that it paid the beneficiary \$300 in January 2010, and \$350 in February, March and April of 2010.

The director denied the petition, stating:

Although the checking account balance could provide the beneficiary with compensation for approximately 21 months, those funds would be depleted and are insufficient to compensate the beneficiary for the duration of the proposed employment of 30 months. The CD indicates additional funds available to the petitioner, however, it can not be concluded these are current assets available to the petitioner to use for the beneficiary's salary.

The director noted that while the petitioner budgeted for total revenue of \$75,000, its first quarter financial statement does not indicate that it would be able to meet that projection.

On appeal, counsel states that the director erred in failing to consider the petitioner's CD as a current asset that can be used to compensate the beneficiary. The petitioner submits a copy of its July 2010 monthly checking account statement indicating that it had a balance of \$60,734 and an

August 31, 2010 letter from its bank indicating that the petitioner's CD matures on May 19, 2011 and had a current balance of \$60,404. Counsel asserts:

The USCIS Decision had already acknowledged the ability of the Petitioner's checking account to cover nearly two (2) years – about twenty-one (21) months of the Beneficiary's compensation. Given that the Petitioner's CD has a maturity of less than one year from the date of the Petition filing and is therefore by definition a "current asset" the CD should be able to more than cover the Beneficiary's salary for the remaining nine (9) month in the thirty (3) month period of proposed employment.

The director's statement and counsel's argument are based on faulty analyses. The director assumes that the entire bank balance would be available for the beneficiary's compensation. The director did not take into consideration any additional income or expenses that the petitioner might incur or for which it had budgeted. Counsel accepts this fallacy in the director's decision and asserts that the remainder of the proposed compensation would be available from the CD. There is nothing in the record, however, to establish that the proceeds of the CD, or any portion, has been or will be set aside for the beneficiary's compensation. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submitted one bank statement, which is dated after the filing date of the petition. It submitted no similar documentation for any period prior to the date the petition was filed. Additionally, the petitioner submitted no documentation to establish that its proposed budget is based on realistic expectations. While both counsel and the director assumes that all of the petitioner's financial resources will be available to compensate the beneficiary, the record does not establish that any monies have been set aside to ensure that the beneficiary will be compensated in the proffered amount.

Counsel asserts on appeal that the director erroneously compared the beneficiary's prior compensation as a part-time employee to the salary offered for full-time employment. However, the director did not "disqualify" the beneficiary based on this comparison, as alleged by counsel, but merely observed that the stipends paid to the beneficiary are different from that shown on the quarterly financial statement and as it is less than the salary offered to the beneficiary, it does not establish that the petitioner has paid the beneficiary the proffered salary in the past.

Counsel also noted that the director "failed to provide" the petitioner with an opportunity to cure the deficiencies in its petition. However, the regulation at 8 C.F.R. § 103.2(b)(8)(iii) provides:

If all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may: deny the application or petition for ineligibility; request more information or evidence from the applicant or

petitioner, to be submitted within a specified period of time as determined by USCIS; or notify the applicant or petitioner of its intent to deny the application or petition and the basis for the proposed denial, and require that the applicant or petitioner submit a response within a specified period of time as determined by USCIS.

Counsel suggests that an exception should exist for nonprofit organizations. However, the regulation does not provide for such an exception and the record does not establish that the director abused her discretion in rendering the decision without first issuing a request for evidence or notifying the petitioner of her intent to deny the petition.

The petitioner has failed to submit competent and verifiable documentation of how it intends to compensate the beneficiary.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.